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REMARKS**I. Introduction**

Claims 1-3 are pending in the above application.

Claims 1-30 stand rejected under 35 U.S.C. § 102.

Claims 1, 2 and 21 are independent claims.

II. Rejections Under Prior Art

Claims 1-30 stand rejected under 35 U.S.C. § 102(c) as being unpatentable over Capek et al. (U.S. Pat. 6,094,677).

Anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference as arranged in the claim. See, Akzo N.V. v. U.S. Int'l Trade Commission, 808 F.2d 1471 (Fed. Cir. 1986); Connell v. Sears, Roebuck & Co., 220 USPQ 193, 198 (Fed. Cir. 1983).

As explained in Applicant's prior response filed on July 5, 2005, Capek does not disclose or suggest inserting an alternative media file into a streaming multimedia file using a first and second cache, a control unit, and a switching mechanism, wherein the alternative media file is inserted in the stream independent of boundaries of the multimedia file, as substantially recited by amended claims 1 and 21. Capek discloses to provide an insert during a delay of receiving requested data. Abs.; Figs. 4A and 4B. Capek discloses to maintain an insertion repository 22 which provides inserts to insertion manager 20, at which point insertions are made in a delay period. Fig. 2. Capek discloses to determine if an insert should be provided based on the sufficiency of the delay period, which may be determined by the actual delay seen or an expected delay

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based on historical information. Col. 10: 52-68; and col. 11: 61 – col. 12: 24. Once the data is retrieved it is provided after the insert, i.e. when the insert is selectively provided with the data, the insert is provided at the beginning of the data – during the delay in retrieving the data. Figs. 3-7; col. 10: 29-51; col. 12: 47-55. Capek does not disclose or suggest inserting an alternative media file into a streaming multimedia file using a first and second cache, a control unit, and a switching mechanism, wherein the alternative media file is inserted in the stream independent of boundaries of the multimedia file.

However, with out explanation or rebuttal of Applicants explanation, the present Office action mailed on August 26, 2005 alleges that Capek discloses “the alternative media file is inserted in the stream independent of boundaries of the multimedia file (Capek, col. 5, lines 20-22, lines 41-52; col. 7, lines 49-52; col. 9, lines 6-24; col. 10, lines 18-28).” The Office action is simply mistaken on the disclosure of Capek. None of the cited portions of Capek remotely disclose or suggest the timing of an insert of an alternative media file in independent to the boundaries of a multimedia file stream, as required by the above claims. Particularly, column 5, lines 20-22 suggest to replace the insertion material with requested program material – i.e. apparently dealing with the content of the insertion. Column 5, lines 41-52 appears to be dealing with providing the insertion to an insertion manager, not with the timing of actually inserting the insertion material with respect to the boundaries of a multimedia file stream. Column 7, lines 49-52 is clearly dealing with the possible content and data format of insertion data, not with the timing of inserting the insertion data. Column 9, lines 6-24 is also dealing with the content of the insertion, stating that the insertion may include a control mechanism delivered to a client. Column 10, lines 18-28 is dealing with determining when the

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insertion data should be forwarded based on "how long it will take to receive all or nearly all the data comprising the program material" which is clearly disclosed to be based on the "delay in retrieving the program material" discussed earlier in the same paragraph (col. 9, lines 54-28). Moreover, Capek clearly describes when the insertion should be made in the immediately following two paragraphs with reference to Figures 4A and 4B.

Accordingly, as explained in Applicant's previous response, Capek simply does not disclose or suggest inserting an alternative media file into a streaming multimedia file using a first and second cache, a control unit, and a switching mechanism, wherein the alternative media file is inserted in the stream independent of boundaries of the multimedia file. To the extent that the Examiner disagrees with Applicant's explanation, the Examiner is respectfully requested to explain the basis for any such disagreement.

Accordingly, as Capek does not disclose or suggest each and every element of amended claims 1 and 21 and hence does not anticipate amended claims 1 and 21. Likewise, as claims 3-20 and 22-30 depend on amended claims 1 and 21 respectively, and contain all of the limitations thereof, Capek also does not anticipate claims 3-20 and 22-30.

Capek also does not disclose using a control signal output from the cache which indicates that a complete alternative file is stored and is ready for transmission to the predetermined at least one end-user, or will be ready in time to transmit, as recited by claim 2, amended to be in independent form. While the Office action cites to col. 7, lines 17-25 of Capek, Capek does not disclose the above features. Capek merely discloses to maintain an insertion repository 22 which contains all of the possible insertions from which a particular assertion is selected. Col. 7: 17-47. A repository 22 is not a cache

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memory, and there is no indication in Capek whether or not a particular insertion stored in the repository is ready for transmission. Capek clearly does not disclose or suggest to provide a control signal indicating that a complete alternative file is stored and is ready for transmission, or will be ready in time to transmit, as recited by claim 2. To the extent that the Examiner disagrees with Applicant, the Examiner is respectfully requested to explain the basis for such disagreement.


III. Conclusion

Having fully responded to the Office action, the application is believed to be in condition for allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicant hereby request such extension and, the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

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Respectfully submitted,

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